(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

WRIT PETITION NO. 32 OF 2004

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri J. Vaz, advocate for the petitioner.

Shri D. P. Bhise, advocate for the respondent no.1.

CORAM : S. A. BOBDE &
N. A. BRITTO, JJ.

DATE :28th June, 2004

P.C.:

By this petition the Commissioner of Customs questions the legality and the propriety of the Order of the CEGAT dated 29th July, 2002 of Customs, Excise & Gold (Control), Appellate Tribunal, West Regional Bench, Mumbai, by which learned CEGAT has allowed the appeal of the Commissioner of Central Excise, Goa, only in regard to one of the respondents, namely, M/s. Primella Sanitary Products Pvt. Ltd., Goa. The learned CEGAT has thereby set aside the order directing refund of duty made by the

Commissioner (Appeals) in the sum of Rs.2,64,236.57 p. in favour of M/s. Primella Sanitary Products Pvt. Ltd. This order was made in Appeal No.71/98.

2. The learned CEGAT did not pass any order in respect of Appeal No.72/98 in respect of respondent no.1, i.e. M/s. Christine Hoden (I) Pvt. Ltd., only on the ground that only one appeal had been filed by the petitioners. The CEGAT has thereby refused to consider the appeal against the Order of the Commissioner directing refund of Rs.78,69,000/-. There is a dispute between the parties on the question whether in fact only one appeal had been filed by the petitioner, i.e. the one against M/s. Primella Sanitary Products Pvt. Ltd., or whether two appeals had been filed. We had, therefore, asked the Commissioner to produce the record of the appeal filed before the CEGAT. The Commissioner has

produced the papers from the departmental record. It is clear from the cause title of the appeal that the appeal was filed against the Order dated 31st October, 2000, against M/s. Christine Hoden (India) Pvt. Ltd. and M/s Primella Sanitary Products Pvt. Ltd., who were both arrayed as respondents. The prayer Clause in the Memo of Appeal reads as follows:-

> "In view of the above submission the Department prays that the impugned Order-in-Appeal Nos.GKP(2422)113/Goa/2000 and GKP(2423)114/Goa both dated 31.1.2000 be set aside and the order passed by the lower authority be upheld."

3. In the circumstances, we are surprised that the CEGAT declined to consider the matter against the present respondents on the ground that only one appeal had been filed. Nothing to the contrary, which shows that only one appeal was filed, is demonstrated by the learned counsel for the

respondents. Hence, we set aside the impugned Order dated 29th July, 2002 to the extent it does not deal with the appeal No. 72/98, on the ground that no such appeal is filed. The learned CEGAT is directed to consider the appeal against the respondents in accordance with law and decide the same as expeditiously as possible. Rule made absolute accordingly.

S. A. BOBDE, J.

N. A. BRITTO, J.

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